



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34- 93927; File No. SR-MEMX-2021-19]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule to Establish a Monthly Membership Fee

January 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 28, 2021, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 3, 2022. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish a Monthly Membership Fee for Members of the Exchange of \$200. The Monthly Membership Fee is proposed to be assessed to each active Member at the close of business on the first day of each month. For example, the Monthly Membership Fee for January 2022 will be assessed to all active Members at the close of business on January 3, 2022, the first business day of the month.

However, if a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the time any Monthly Membership Fee will be assessed (i.e., the close of business on January 3, 2022) and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not be obligated to pay the Monthly Membership Fee, as such Member will not be considered to have an "active" Membership. The Exchange believes this to be appropriate because there are several pre-conditions and then a 30-day waiting period before a voluntary resignation shall take effect pursuant to Rule 2.8.

As proposed, the Monthly Membership Fee for a firm will not be prorated, which the Exchange believes is reasonable based on the frequency that the fee is assessed (i.e., monthly instead of applying to a longer period) and the relatively low proposed fee of \$200 for the Monthly Membership Fee.

The Exchange does not presently contemplate proposing any application fees, trading rights or trading permit fees, market participant identifier ("MPID") fees or so-called "headcount" fees.

To reflect the implementation of the Monthly Membership Fee proposed herein, the Exchange also proposes to delete the following sentence from the Fee Schedule: "MEMX does not charge for membership, market data products, physical connectivity or application

sessions.” The Exchange notes that it is not proposing to adopt fees for market data products at this time. The Exchange further notes that it is separately filing a proposal to adopt fees for physical connectivity and application sessions (with the same implementation date as the proposed changes in this filing) and that such separate proposal will also propose to add language in the Fee Schedule stating that MEMX does not charge fees for market data products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that there is value in becoming a Member of the Exchange and that the proposed Monthly Membership Fee is reasonable. The Monthly Membership Fee is lower than or comparable to the membership fees imposed by several other national securities exchanges that charge such fees.⁶ Moreover, insofar as the Exchange does not charge – nor does

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ For example, the New York Stock Exchange LLC (“NYSE”) annual trading license fee for member organizations ranges from approximately \$25,000 to \$50,000 based on the type of member organization and number of trading licenses. See “Trading Licenses,” NYSE Price List 2021 (last updated December 1, 2021), available at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. The Nasdaq Stock Market LLC (“Nasdaq”) annual membership fee is \$3,000 plus a monthly \$1,250 trading rights fee (together with the annual membership fee, totaling \$18,000 per year). See “NASDAQ Membership Fees,” Nasdaq Price List, available at: <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#membership>. See also Securities Exchange Act Release No. 34-81133 (July 12, 2017), 82 FR 32904 (July 18, 2017) (SR-NASDAQ-2017-065) (discussing the reasonableness of Nasdaq’s fees). Finally, Cboe BZX Exchange, Inc. (“Cboe BZX”) charges an annual membership fee of \$2,500 plus an additional fee of \$350 per month for each additional MPID a member maintains other than their first (i.e., an annual fee of \$4,200 per additional MPID). See “Membership Fees” and “Market Participant Identifier (‘MPID’) Fees” sections of the Cboe BZX Fee Schedule, available at: https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

it presently contemplate charging – application fees, trading rights fees, trading permit fees, or fees for multiple MPIDs, the comparative price of membership is less or significantly less than comparative prices at other exchanges.⁷ The Exchange also does not charge – nor does it presently contemplate charging – so-called “headcount fees,” e.g., fees charged for each Form U-4 filed for registration of a representative or a principal or the transfer or re-licensing of such personnel,⁸ further highlighting the reasonableness of the proposed Monthly Membership Fee.

The Exchange believes that the proposed Monthly Membership Fee is not unfairly discriminatory because it would be assessed equally across all Members or firms that seek to become Members. The Exchange believes that the proposed Monthly Membership Fee is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange’s growth in one year to more than 4% of the overall equities market share. To illustrate, the Exchange currently has 66 Members. However, based on publicly available information regarding a sample of the Exchange’s competitors, NYSE has 142 members, Cboe BZX has 140 members, and Investors Exchange LLC (“IEX”) has 133 members.⁹

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the

⁷ See id.

⁸ See, e.g., “NASDAQ Membership Fees,” supra note 6 (\$55 for each Form U-4 filed for the registration of a Representative or Principal, and \$55 for each Form U-4 filed for the transfer or re-licensing of a Representative or Principal).

⁹ See NYSE Membership Directory, available at: <https://www.nyse.com/markets/nyse/membership>; Cboe BZX Form 1 filed November 19, 2021, available at: <https://www.sec.gov/Archives/edgar/vprr/2100/21009368.pdf>; IEX Current Members list, available at: <https://exchange.iex.io/resources/trading/current-membership/>.

Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange. The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equities exchanges. However, the Exchange believes that the proposed fee of \$200 as a Monthly Membership Fee is reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that deemed it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

The Exchange further believes that the proposed fees would be an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and are not unfairly discriminatory. As the Commission noted in its Concept Release Concerning Self-Regulation:

The Commission to date has not issued detailed rules specifying proper funding levels of [self-regulatory organization ("SRO")] regulatory programs, or how costs should be allocated among the various SRO constituencies. Rather, the Commission has examined the SROs to determine whether they are complying with their statutory responsibilities. This approach was developed in response to the diverse characteristics and roles of the various SROs and the markets they operate. The mechanics of SRO funding, including the amount of revenue that is spent on regulation and how that amount is allocated among various regulatory operations, is related to the type of market that an SRO is operating. Thus, each SRO and its financial structure is, to a certain extent, unique. While this uniqueness can result in different levels of SRO funding across markets, it also is a reflection of one of the primary underpinnings of the National Market System. Specifically, by fostering an environment in which diverse markets with diverse business models compete within a unified National Market System, investors and market

participants benefit.¹⁰

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. Effective regulation is central to the proper functioning of the securities markets. Recognizing the importance of such efforts, Congress decided to require national securities exchanges to register with the Commission as self-regulatory organizations to carry out the purposes of the Act. The Exchange therefore believes that it is critical to ensure that regulation is appropriately funded. The Monthly Membership Fee is expected to provide a source of funding towards the Exchange's costs related to onboarding Members and providing ongoing support.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹² the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed membership fees will be lower than the cost of membership on other exchanges,¹³ and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see

¹⁰ Securities Exchange Act Release No. 34-50700 (November 22, 2004), 69 FR 71255, 71267-68 (December 8, 2004) (File No. S7-40-04).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² 15 U.S.C. 78f(b)(8).

¹³ See supra note 6.

a decline in membership as a result. The proposed fee change will not impact intermarket [sic] competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2021-19 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MEMX-2021-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2021-19 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

¹⁶ 17 CFR 200.30-3(a)(12).

Assistant Secretary.

[FR Doc. 2022-00489 Filed: 1/12/2022 8:45 am; Publication Date: 1/13/2022]